

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

SENTINEL MANAGEMENT GROUP, INC.,

Debtor.

Chapter 11

Case No. 07-14987

Hon. John H. Squires

Hearing Date: December 18, 2008

Hearing Time: 10:00 a.m.

**REPLY IN SUPPORT OF MOTION OF
RECEIVER'S MOTION TO STRIKE CLAIM OBJECTIONS**

Robb Evans & Associates, LLC, the court appointed temporary equity receiver for the Lake Shore Common Enterprise (the "Receiver") states as follows for his reply in support of his Motion to Strike Claim Objections (the "Motion"):¹

INTRODUCTION

On December 4, 2008 the SEG 1 Claimants filed an omnibus objection (the "Response") to the Receiver's Motion and the Trustee's Motion primarily arguing that: (i) the SEG 1 Claimants have proper standing to pursue the Objections; (ii) the Objections are proper and sustainable pursuant to § 502(d); and (iii) the propriety of the Objections will not be affected by plan confirmation. Contemporaneously herewith, the Trustee has filed his reply in support of the Trustee's Motion (the "Trustee's Reply") addressing, among other things, the SEG 1 Claimants' standing and the impact of plan confirmation on the Objections. The Receiver adopts the averments contained in the Trustee's Reply, incorporates them by this reference pursuant to

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Federal Rule of Bankruptcy Procedure 7010 and Federal Rule of Civil Procedure 10(c), and addresses the limited issue of the propriety of the Objections under § 502(d) below.

ARGUMENT

By the Objections and the Response, the SEG 1 Claimants request that the Objection be sustained “pending either the dismissal of the preference claims against the Seg 1 Claimants or the initiation of preference suits against the holders of the claims subject to the Claim Objections by the Trustee.” *See* Response at p. 8. The Response reveals the frivolity of the Objections by continuing to argue that the transfers made by the Debtor prior to August 13, 2007² were “textbook examples of ‘ordinary course of business’ payments under section 547(c)(2) of the Bankruptcy Code” and that the Trustee’s theory of recovery is an “unsupportable” (*see* Response at p. 2) while, at the same time, continuing to assert that the § 502(d) Objections may be sustained. The Objections cannot be sustained if the claims that underlie them lack merit.

The Receiver does not contend in the Motion, as the SEG 1 Claimants suggest in the Response, that a *final* adjudication of liability must be entered or that a transfer must actually be avoided before a § 502(d) objection may be sustained. To the contrary, the Receiver agrees that neither a *final* adjudication nor actual avoidance of a transfer is required. The Receiver disagrees, however, that the SEG 1 Claimants’ mere allegation of the possible existence of a possible avoidable transfer is sufficient to sustain an objection pursuant § 502(d). Indeed, each of the cases relied upon by the SEG 1 Claimants for that proposition (*Red Dot*, *Southern Air*, and *Stoecker*) require that, at a minimum, a *preliminary* judicial determination of liability must be made before an objection pursuant to § 502(d) can be sustained. In continuing to rely upon *Red*

² All of the transfers that the SEG 1 Claimants consider to be potentially recoverable by the Trustee from the Receiver occurred prior to August 13, 2007. *See* Response at Exhibit B.

Dot, *Southern Air*, and *Stoecker* in the Response, the SEG 1 Claimants actually make that very point for the Receiver.

As the Response highlights, the courts in *Red Dot*, *Southern Air* and *Stoecker* actually required a judicial determination of liability to prevent abuse of § 502(d). *See* Response at p. 8 (citing *Red Dot*, 313 B.R. 181, 186 (Bankr. S.D.N.Y. 2004) (“initial disallowance should be made by judicial determination, whether it be obtained in a claim objection or by some form of declaratory judgment action.”); *see also* *Southern Air*, 294 B.R. 293, 296 (Bankr. S.D. Ohio 2003) (the “claim can neither be allowed nor disallowed until the preference matter is adjudicated”); *Stoecker* 143 B.R. 118, 131 (Bankr. N.D. Ill. 1992) (suggesting that a *prima facie* case would support a judicial determination of liability). In order for the Objections to be successful, therefore, the Court must make a determination that the Receiver is, at a minimum likely to be liable to the Estate for avoidable transfers. The Court cannot make such a determination based the Objections.

The Objections are void of any allegations by the SEG 1 Claimants that the claims the Trustee *may* assert against the Receiver have merit and are void of any request by the SEG 1 Claimants for the Court to make such a determination. Indeed, to the extent the merits of the underlying avoidance claims are discussed in the Objections and the Response, the SEG 1 Claimants repeatedly assert that the Trustee’s avoidance claims are entirely without merit that neither the SEG 1 Claimants nor the Receiver should have any liability to the Estate on account of avoidable transfers. *See* Objection at p. 5 (“the Trustee’s preference claims have no merit”); *see also* Response at p. 2 (describing the transfers as “textbook examples of ‘ordinary course of business’ payments” and asserting that the Trustee’s theory of avoidance is “unsupportable”). If the claims that provide the basis for objection are not valid in the eyes of the objector, how can

the objection be sustained? While the SEG 1 Claimants' position is understandable in light of the defenses they have asserted in the now pending avoidance actions, the position only serves to undermine any basis the Court may have to sustain the Objections pursuant to § 502(d). Because the Objections fail to assert or establish any *prima facie* claims that the Court may rely upon in sustaining the Objections pursuant to § 502(d), the Objections must be stricken.

CONCLUSION

The SEG 1 Claimants' allegations that the Trustee *may* (but probably does not) have claims against the Receiver to avoid transfers that *may* (but probably will not) result in a liability that *may* give rise to a valid § 502(d) objection is not sufficient to disallow the Receiver's Claims, preliminarily or otherwise. The Objections are contradictory and meritless on their face and must be stricken.

WHEREFORE, the Receiver respectfully requests that this Court enter an order granting the Motion, striking the Objections and granting the Receiver such other and further relief as the Court may deem appropriate under the circumstances.

December 15, 2008

Respectfully Submitted

**Robb Evans & Associates, LLC,
Temporary Equity Receiver for the
Lake Shore Common Enterprise**

Ira Bodenstein (#3126857)
Patrick A. Clisham (#6277264)
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
321 North Clark Street, Suite 800
Chicago, IL 60610
Tel: (312) 980-3836
Fax: (312) 275-0584
pclisham@shawgussis.com

By: /s/ Patrick A. Clisham
One of its attorneys

CERTIFICATE OF SERVICE

Patrick A. Clisham certifies that service of the above attached document was accomplished through the Electronic Notice for Registrants on the attached CM/ECF service list on this 15th day of December, 2008.

/s/ Patrick A. Clisham

ECF Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notices for this case.

- R Scott Alsterda rsalsterda@uhlawa.com, rwcalabro@uhlawa.com
- Janice A Alwin jalwin@shawgussis.com
- Ronald Barliant ronald.barliant@goldbergkohn.com
- Richard M Bendix rbendix@dykema.com, nrakunas@dykema.com
- Mark A Berkoff mark.berkoff@dlapiper.com, cheryl.dennis@dlapiper.com
- Ira Bodenstein ibodenstein@shawgussis.com
- Gennice D Brickhouse , efile@pbgc.gov
- Abraham Brustein abrustein@dimonteandlizak.com
- Terence Campbell tcwolfram@aol.com
- Timothy R Casey timothy.casey@dbr.com
- Robert B. Christie rchristie@henderson-lyman.com
- Nathan F Coco ncoco@mwe.com
- James C Conley , ckarlshoej@vgmlaw.com
- William J Connelly wconnelly@hinshawlaw.com
- David S. Curry dcurry@mayerbrown.com
- Angela D Dodd dodda@sec.gov
- Michael M. Eidelman meidelman@vedderprice.com, ecf-docket@vedderprice.com
- William A. Evanoff wevanoff@sidley.com, efilinnotice@sidley.com
- Nancy G Everett neverett@winston.com, ECF_Bank@winston.com
- Marc I Fenton marc.fenton@dlapiper.com

- Benjamin I Finestone benjaminfinestone@quinnemanuel.com
- J Mark Fisher mfisher@schiffhardin.com,
edocket@schiffhardin.com;srizziardi@schiffhardin.com
- Robert M Fishman rfishman@shawgussis.com
- Ira P Goldberg igoldberg@dimonteandlizak.com, avalkov@dimonteandlizak.com
- Geoffrey S. Goodman ggoodman@foley.com, egreen@foley.com;khall@foley.com
- Jennifer B Herzog jherzog@gklaw.com
- Stephanie Hor shor@vedderprice.com,
ecf_docket@vedderprice.com;jwilson@vedderprice.com
- Gregory J Jordan gjordan@akjltd.com
- Harold L Kaplan harold.kaplan@dbr.com
- Harold L. Kaplan hkaplan@gcd.com
- Randall Klein randall.klein@goldbergkohn.com, amy.halpin@goldbergkohn.com
- Vincent E. Lazar vlazar@jenner.com,
lyap@jenner.com;jeberhard@jenner.com;docketing@jenner.com
- Joanne Lee jlee@foley.com
- Monika J. Machen mmachen@sonnenschein.com
- Sajida A Mahdi smahdi@mayerbrown.com
- Eric J Malnar ejm@hannafanlaw.com
- William J McKenna wmckenna@foley.com, khall@foley.com
- James J McNamara jmcnamara@srzlaw.com,
rtrizna@srzlaw.com;dgiangrossi@srzlaw.com
- Jill L Murch jmurch@foley.com, mquintero@foley.com;rbressler@foley.com
- William T Neary USTPRegion11.ES.ECF@usdoj.gov
- Timothy F Nixon tnixon@gklaw.com
- Michael W Ott mott@mayerbrown.com
- Mark Page mpage@kelleydrye.com, BankruptcyDepartment@Kelleydrye.com
- Kathryn A Pamerter kathryn.pamerter@goldbergkohn.com
- N Neville Reid nreid@mayerbrown.com, mclyle@mayerbrown.com

- Elizabeth E Richert erichert@colemanlawfirm.com, jjohnson@colemanlawfirm.com; jdulberg@pszjlaw.com; jpomerantz@pszjlaw.com; bdass a@pszjlaw.com
- Bella Rozenberg brozenberg@cftc.gov
- Joel A Schechter joelschechter@covad.net
- Ryan T Schultz rschultz@mwe.com
- Sean T Scott stscott@mayerbrown.com, btrust@mayerbrown.com; agolianopoulos@mayerbrown.com; cwilliams-pugh@mayerbrown.com
- Robert V. Shannon rshannon@bellboyd.com, docket@bellboyd.com
- Peter A Siddiqui peter.siddiqui@kattenlaw.com
- John P Sieger john.sieger@kattenlaw.com
- Morgan M. Smith mmsmith@dykema.com, truckman@dykema.com
- Dennis M Twomey dtwomey@sidley.com, efilenotice@sidley.com; bkrakauer@sidley.com
- Andrew L. Wool andrew.wool@kattenlaw.com, ecfdoCKET@kattenlaw.com
- Peter J Young pyoung@winston.com